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HMC ASSETS, LLC SOLELY IN ITS CAPACITY AS SEPARATE TRUSTEE OF CAM XI
TRUST, its successors and/or assignees

UNITED STATES BANKRUPTCY COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

ROSITA BELLO,

Debtor.

Bk. No. 2:22-bk-14943-WB

Chapter 13

**OBJECTIONS TO CONFIRMATION OF
PLAN**

Hearing- 341 Meeting of Creditors

Date: October 20, 2022

Time: 9:00am

Place: Via Telephone/Videoconference

Hearing- Confirmation Hearing

Date: November 16, 2022

Time: 10:00am

Place: Bankruptcy Court

255 E. Temple Street

Los Angeles, CA 90012

Courtroom 1375

HMC ASSETS, LLC SOLELY IN ITS CAPACITY AS SEPARATE TRUSTEE
OF CAM XI TRUST, its successors and/or assignees in interest (“**Lender**”), secured creditor of
the above named Debtor, hereby submits these Objections to the Debtor’s Chapter 13 Plan
(“**Plan**”). These Objections are based on the pleadings and records on file in this matter, the
Declaration of Chris Carman (“**Lender Declaration**”), the Declaration of Reilly D. Wilkinson
(“**Wilkinson Declaration**”) and the following memorandum. Lender also requests that the
Court take Judicial Notice of certain documents of public record and on file with this Court in

1 accordance with Federal Rule of Evidence 201, including, but not limited to Debtor's Chapter
2 13 Plan, and Schedules.

3 I. INTRODUCTION

4 This is the second bankruptcy filed by the Debtor pending within the past 2 months.
5 Lender's predecessor filed a Motion for Relief in the prior bankruptcy. However, Debtor's prior
6 bankruptcy was dismissed on August 25, 2022 prior to the Court issuing a ruling on the Motion
7 for Relief. Debtor then refiled this instant case shortly thereafter on September 9, 2022. Despite
8 Debtor owing Lender \$177,508.00 *in pre-petition arrears*, the proposed Plan provides for Debtor
9 to make on-going payments, nothing on arrears, and categorizes Lender's claim as unsecured.

10 Furthermore, Debtor does not have income to fund her Plan. Debtor is relying on
11 \$1,000.00 in monthly contribution from her son. In addition, she is collecting \$4,166.67 a month
12 in "Windmill Royalties". Debtor has not provided any evidence as to this income source and is
13 purely speculative. As these contributions should not be considered income for purposes of this
14 Chapter 13 bankruptcy, it appears as though the Debtor will be unable to fund the proposed Plan.
15 Accordingly, the Plan is infeasible and is an impermissible modification of claim.

16 II. FACTS

17 1. Lender is the current payee of a Promissory Note dated February 13, 2008
18 in the principal amount of \$600,000.00 (the "**Note**") secured by a First Deed of Trust of same
19 date, which bears interest as specified therein. The indebtedness evidenced by the Note is
20 secured by a Deed of Trust executed and recorded in Los Angeles County and which encumbers
21 the real property located at **6128-6134 Gallant Street, Bell Gardens, CA 90201-5510** (the
22 "**Property**"), the Debtor's residence¹.

23 2. On September 9, 2022, Debtor filed a Petition under Chapter 13 of the
24 Bankruptcy Code, Case No. 2:22-bk-14943-WB ("**Current Bankruptcy**"). This is the second
25 bankruptcy filed by the Debtor pending within the last 2 months and the seventh bankruptcy
26 pending since 2015. Below is a summary of the prior cases:

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¹ See Lender's Declaration, Par. 3 and 4.

First Bankruptcy

On December 8, 2015, Debtor filed a Petition under Chapter 13 of the Bankruptcy Code, Case No. 2:15-bk-28648-SK (“**First Bankruptcy**”). Shortly thereafter, on December 15, 2015, the Court entered an Order and Notice of Dismissal due to the Debtor’s failure to file initial Petition documents².

Second Bankruptcy

On June 5, 2017, Debtor filed a Petition under Chapter 13 of the Bankruptcy Code, Case No. 2:17-bk-16891-NB (“**Second Bankruptcy**”). On July 6, 2018, a Creditor in the Second Bankruptcy, Sarla Gupta (“**Gupta**”), filed a Motion to Dismiss³. After hearing and argument, on August 3, 2018, the Court entered an Order Dismissing the Second Bankruptcy⁴.

Third Bankruptcy

On November 1, 2018, Debtor filed a Petition under Chapter 13 of the Bankruptcy Code, Case No. 2:18-bk-22918-NB (“**Third Bankruptcy**”). On February 27, 2019, Gupta filed a Motion to Dismiss the Third Bankruptcy⁵. As a result, on May 20, 2019, the Court entered an Order Granting the Motion to Dismiss with a 180-Day Bar against the Debtor from refiling⁶.

Fourth Bankruptcy

On March 26, 2020, Debtor filed a Petition under Chapter 13 of the Bankruptcy Code, Case No. 2:20-bk-13281-WB (“**Fourth Bankruptcy**”). On October 29, 2020, the Court entered an Order and Notice of Dismissal arising from the Confirmation Hearing⁷.

Fifth Bankruptcy

On November 29, 2020, Debtor filed a Petition under Chapter 13 of the Bankruptcy Code, Case No. 2:20-bk-20558-WB (“**Fifth Bankruptcy**”). On July 28, 2021, Lender’s predecessor in interest filed a Motion for Relief from the Automatic Stay (“**1st MFR**”)⁸. Prior to the hearing on the 1st MFR, on August 23, 2021, the Court entered an Order and Notice of Dismissal⁹.

² See First Bankruptcy, Docket No. 12.

³ See Second Bankruptcy, Docket No. 54.

⁴ See Second Bankruptcy, Docket No. 59.

⁵ See Third Bankruptcy, Docket No. 30.

⁶ See Third Bankruptcy, Docket No. 66.

⁷ See Fourth Bankruptcy, Docket No. 44.

⁸ See Fifth Bankruptcy, Docket No. 45.

⁹ See Fifth Bankruptcy, Docket No. 47.

1 **Sixth Bankruptcy**

2 On October 3, 2021, Debtor filed a Petition under Chapter 13 of the Bankruptcy Code,
3 Case No. 2:21-bk-17694-WB (“**Sixth Bankruptcy**”). The Debtor filed a Plan in the Sixth
4 Bankruptcy which proposed to cure \$162,488.18 in arrears to Lender’s predecessor in interest¹⁰.
5 On November 16, 2021, Lender’s predecessor in interest filed a Motion for Relief (“**2nd**
6 **MFR**”)¹¹. Prior to the Court issuing a ruling on the Motion for Relief, the Prior Bankruptcy was
7 dismissed on August 25, 2022¹².

8 **Current (Seventh) Bankruptcy**

9 (i) Schedules:

- 10 ○ In Schedule A/B, Debtor lists the value of the Property as \$745,900;
- 11 ○ In Schedule D, the Debtor lists Lender’s claim in the amount of
- 12 \$813,232¹³ and a lien in favor of Los Angeles County Tax Collector in the
- 13 amount of \$21,853;
- 14 ○ In Schedule G, the Debtor lists no unexpired leases;
- 15 ○ In Schedule I, the Debtor lists monthly income in the amount of
- 16 \$6,746.67. This amount is comprised of:
 - 17 ■ \$950.00 in unexplained income from either rent or a business
 - 18 ■ \$4,166.67 in “Windmill Royalties”
 - 19 ■ \$1,000 in “Son’s Contribution”
- 20 ○ In Schedule J, the Debtor lists monthly expenses in the amount of
- 21 \$6,194.35, leaving monthly disposable income of \$552.32.

22 (ii) Plan:

- 23 ○ Debtor to make 60 months Plan payments of \$3,432.20;
- 24 ○ Lender’s Claim is listed as Class 5B as an unsecured claim to be paid
- 25 directly by Debtor.

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¹⁰ See Sixth Bankruptcy, Docket No. 41.

¹¹ See Sixth Bankruptcy, Docket No. 32.

¹² See Sixth Bankruptcy, Docket No. 51.

¹³ Debtor incorrectly lists the claim in favor of Selene Finance, LP.

1 (iii) Claim:

- 2 ○ Debtor owes \$177,508.00 in pre-petition arrears (“**Arrears**”) to Lender¹⁴ and the
3 current monthly payment is \$3,452.08.

4 (iv) Current Performance Under the Plan:

- 5 ○ Debtor’s first plan payment of \$3,432.20 was due on 10/9/22. Debtor has not
6 made a plan payment yet¹⁵.

7 **III. OBJECTIONS**

8 **Infeasible Plan in Violation of 11 U.S.C. § 1325(a)(6).**

9 Given the claim of Lender which must be paid under the Plan, Debtor’s Plan is infeasible
10 and in violation of 11 U.S.C. § 1325(a)(6).

11 A. Debtor Does Not Provide for the Cure of Arrears

12 The Debtor has inexplicably listed Lender’s claim as unsecured and failed provide for the
13 cure of arrears owed on Lender’s claim. Lender is owed \$177,508.00 for Arrears, consisting of
14 pre-petition payments, late charges and foreclosure fees as of the date of the petition. The failure
15 to correctly include Lender’s claim makes the Plan infeasible.

16 B. Debtor Lacks Income and is Relying on Third Party Contributions and Unexplained
17 Income

18 Debtor’s own Schedules show that she cannot make the payments required to pay
19 Lender’s claim in full. In fact, it appears that she cannot afford the Plan as proposed. Debtor’s
20 Schedules show disposable income of \$552.32.

21 *First*, Debtor is relying on \$1,000 per month in contributions from her son. Lender asserts
22 that this type of plan is not confirmable. Courts in the 9th Circuit have held that “[g]ratuitous
23 payments from family members and other third parties do not generally constitute regular
24 income for purposes of 11 U.S.C.S. § 101(30), with some exceptions.” These types of
25 “contribution” plans have generally been held to be infeasible and in violation of 11 U.S.C. §
26 1325(a)(6) (See, for example, *In re Deutsch*, 2015 Bankr. LEXIS 1368 (Bankr. C.D. Cal. Apr.
27 20, 2015), holding that contribution from family members was not “regular” income as required
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¹⁴ See Lender’s Declaration, Par. 6.

¹⁵ See Wilkinson Dec, Par. 3.

1 to be a debtor; see also *In re Welsh*, 2003 Bankr. LEXIS 2246 (Bankr. D. Idaho Feb 26, 2003)).

2 Here, nothing has been provided to show the legitimacy and regularity of the contributions.

3 *Second*, the Debtor lists \$950 in monthly income from the operation of a business or
4 rental income. The Debtor fails to attach a statement showing receipts, ordinary expenses and
5 total monthly net income from the business or rental. In addition, the Debtor has not listed any
6 leases in his Schedules. This income is unexplained and unreliable.

7 C. Debtor is Already in Default on Plan Payments

8 The best indicator of future performance is past performance. This is the Debtor's
9 seventh bankruptcy filed since 2015, and the 3rd case pending in the last year. Each of those
10 prior cases were dismissed. This case was filed on September 9, 2022, less than two months ago.
11 The first plan payment of \$3,342.20 was due on October 9, 2020, almost a month ago. The
12 Debtor has yet to make the payment. An additional plan payment will come due by the hearing
13 on confirmation. The fact that the Debtor cannot make her first plan payment is further evidence
14 that this Plan is not feasible.

15 **Impermissible Modification in Violation of 11 U.S.C. § 1332(b)(2).**

16 The failure to pay Lender's claim in full is in violation of 11 U.S.C. § 1325(a)(6) and is
17 not allowed by law. Also, Debtor cannot modify its claim over Lender's objections as detailed
18 herein. The failure to pay Lender's claim in full and the attempt to modify Lender's claim is in
19 violation of modification of loan, 11 U.S.C. § 1322(b)(2) and § 1325(a)(5) and is not allowed by
20 law.

21 **IV. CONCLUSION**

22 This Bankruptcy and Plan appear to be filed without a legitimate attempt to reorganize
23 and is infeasible as proposed. Wherefore, Lender prays that Debtor's Plan not be confirmed and
24 that these proceedings be dismissed.

25 SCHEER LAW GROUP, LLP

26 DATED: November 2, 2022

27 /s/REILLY D. WILKINSON
28 #250086